



[Docket No. DHS-2011-0108]

RIN 1601-ZA11

## **Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs**

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Notice.

**SUMMARY:** Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may generally only approve petitions for H-2A and H-2B nonimmigrant status for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. Each such notice shall be effective for one year after its date of publication. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 85 countries whose nationals are eligible to participate in the H-2A program and 86 countries whose nationals are eligible to participate in the H-2B program for the coming year.

**DATES:** The designations in this notice are effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and shall be without effect on November 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ihsan Gunduz, Office of Strategy, Policy, and Plans, Department of Homeland Security, Washington, DC 20528, (202) 282-9708.

### **SUPPLEMENTARY INFORMATION:**

#### **Background:**

Generally, USCIS may approve H-2A and H-2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has

designated as participating countries.<sup>1</sup> Such designation must be published as a notice in the **Federal Register** and expires after one year. In designating countries to include on the lists, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Examples of specific factors serving the U.S. interest that are taken into account when considering whether to designate or terminate the designation of a country include, but are not limited to: Fraud (such as fraud in the H-2 petition or visa application process by nationals of the country, the country's level of cooperation with the U.S. government in addressing H-2 associated visa fraud, and the country's level of information sharing to combat immigration-related fraud), nonimmigrant visa overstay<sup>2</sup> rates for nationals of the country (including but not limited to H-2A and H-2B nonimmigrant visa overstay rates), and non-compliance with the terms and conditions of the H-2 visa programs by nationals of the country.

As previously indicated, *see* 86 FR 2689, in evaluating the U.S. interest, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will generally ascribe a negative weight to evidence that a country had a suspected in-country visa overstay rate of 10

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<sup>1</sup> With respect to all references to "country" or "countries" in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. 96-8, Section 4(b)(1), provides that "[w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. 3303(b)(1). Accordingly, all references to "country" or "countries" in the regulations governing whether nationals of a country are eligible for H-2 program participation, 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1), are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

<sup>2</sup> An overstay is a nonimmigrant lawfully admitted to the United States for an authorized period, but who remained in the United States beyond his or her authorized period of admission. U.S. Customs and Border Protection (CBP) identifies two types of overstays: 1) individuals for whom no departure was recorded (Suspected In-Country Overstays), and 2) individuals whose departure was recorded after their authorized period of admission expired (Out-of-Country Overstays). For purposes of this Federal Register Notice, DHS uses FY 2020 CBP nonimmigrant overstay data, including but not limited to H-2A and H-2B overstay data.

percent or higher with a number of expected departures of 50 individuals or higher in either the H-2A or H-2B classification according to U.S. Customs and Border Protection overstay data, and generally will terminate designation of that country from the H-2A or H-2B nonimmigrant visa program, as appropriate, unless, after consideration of other relevant factors, it is determined not to be in the U.S. interest to do so.

Similarly, DHS recognizes that countries designated under long-standing practice by U.S. Immigration and Customs Enforcement (ICE) as “At Risk of Non-Compliance” or “Uncooperative” with removals based on ICE data put the integrity of the immigration system and the American people at risk. Therefore, unless other favorable factors in the U.S. interest outweigh such designations by ICE, the Secretary of Homeland Security, with the concurrence of the Secretary of State, generally will terminate designation of such countries from the H-2A and H-2B nonimmigrant visa programs. Because there are separate lists for the H-2A and H-2B categories, it is possible that, in applying the above-described regulatory criteria for listing countries, a country may appear on one list but not on the other.

Even where the Secretary of Homeland Security has determined to terminate or decided not to designate a country, DHS, through USCIS, may allow, on a case-by-case basis, a national from a country that is not on the list to be named as a beneficiary of an H-2A or H-2B petition based on a determination that it is in the U.S. interest for that individual noncitizen to be a beneficiary of an H-2 petition. Determination of such U.S. interest will take into account factors, including but not limited to: 1) evidence from the petitioner demonstrating that a worker with the required skills is not available either from among U.S. workers or from among foreign workers from a country currently on the list described in 8 CFR 214.2(h)(5)(i)(F)(1)(i) (H-2A nonimmigrants) or 214.2(h)(6)(1)(E)(1) (H-2B nonimmigrants), as applicable; 2) evidence that the beneficiary has been admitted to the United States previously in H-2A or H-2B status; 3) the potential for abuse, fraud, or other harm to the integrity of the H-2A or H-2B visa program through the potential admission of a beneficiary from a country not currently on the list; and 4)

such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2).

In December 2008, DHS published the first lists of eligible countries for the H-2A and H-2B Visa Programs in the **Federal Register**. These notices, “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A Visa Program,” and “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2B Visa Program,” designated 28 countries whose nationals were eligible to participate in the H-2A and H-2B programs. *See* 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010, and January 18, 2010, respectively. *See* 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. *See* 75 FR 2879 (Jan. 19, 2010) (adding 11 countries to both programs); 76 FR 2915 (Jan. 18, 2011) (removing one country from and adding 15 countries to both programs); 77 FR 2558 (Jan. 18, 2012) (adding five countries to both programs); 78 FR 4154 (Jan. 18, 2013) (adding one country to both programs); 79 FR 3214 (Jan. 17, 2014) (adding four countries to both programs); 79 FR 74735 (Dec. 16, 2014) (adding five countries to both programs); 80 FR 72079 (Nov. 18, 2015) (removing one country from the H-2B program and adding 16 countries to both programs); 81 FR 74468 (Oct. 26, 2016) (adding one country to both programs); 83 FR 2646 (Jan. 18, 2018) (removing three countries from and adding one country to both programs); 84 FR 133 (Jan. 18, 2019) (removing two countries and adding 2 countries from both programs, removing one country from only the H-2B program, , and adding one country to only the H-2A program); 85 FR 3067 (January 17, 2020) (remained unchanged); and 86 FR 2689 (Jan. 13, 2021) (removing two countries from both programs, removing one country from only the H-2A program, and adding one country to only the H-2B program).

#### **Determination of Countries with Continued Eligibility**

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 80 countries previously designated to participate in the H-2A program in the January 13, 2021 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2A program. Additionally, the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 80 countries previously designated to participate in the H-2B program in the January 13, 2021 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2B program. These determinations take into account how the regulatory factors identified above apply to each of these countries.

### **Countries No Longer Designated as Eligible**

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that Moldova should no longer be designated as an H-2A eligible country because it no longer meets the regulatory standards identified above. Specifically, The Department of State (DOS) has evidence of agents recruiting applicants for H and J visas in Moldova collecting recruitment fees prohibited under U.S. law for certain visas including H-2A. The United States Government has also documented increasingly sophisticated levels of fraud by Moldovan nationals seeking to obtain H-2A visas with a photocopy of a bona fide unnamed petition and fraudulent work contracts. Considering these factors, and absent significant mitigating factors, the continued eligibility of Moldova to participate in the H-2A program no longer serves the U.S. interest. Therefore, the Secretary of Homeland Security, with the concurrence of the Secretary of State, is removing Moldova from the list of H-2A eligible countries. In a November 18, 2015 **Federal Register Notice**, the Secretary of Homeland Security, with the concurrence of the Secretary of State, removed Moldova from the list of eligible countries to participate the H-2B program. As such, Moldova will no longer be eligible

to participate in either the H-2A and H-2B programs. However, Moldova's eligibility for the H-2A program remains effective until the prior designation expires on January 18, 2022.

Based on the foregoing analysis, DHS, with the concurrence of DOS, has removed one country from the H-2A eligible country list. Nonetheless, and as already noted, nationals of non-designated countries may still be beneficiaries of approved H-2A and H-2B petitions upon the request of the petitioner if USCIS determines, as a matter of discretion and on a case-by-case basis, that it is in the U.S. interest for the individual to be a beneficiary of such petition. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2). USCIS may favorably consider a beneficiary of an H-2A or H-2B petition who is not a national of a country included on the H-2A or H-2B eligibility list as serving the national interest, depending on the totality of the circumstances. Factors USCIS may consider include, among other things, whether a beneficiary has previously been admitted to the United States in H-2A or H-2B status and complied with the terms of the program. An additional factor for beneficiaries of H-2B petitions, although not necessarily determinative standing alone, would be whether the H-2B petition qualifies under section 1049 of the National Defense Authorization Act (NDAA) for FY 2018, Pub.L. 115-91, section 1045 of the NDAA for FY 2019, Pub.L. 115-232, or section 9502 of the NDAA for FY 2021, Pub.L. 116-23. However, any ultimate determination of eligibility will be made according to all the relevant factors and evidence in each individual circumstance.

### **Countries Now Designated as Eligible**

The Secretary of Homeland Security has also determined, with the concurrence of the Secretary of State, that Bosnia and Herzegovina, the Republic of Cyprus, the Dominican Republic (currently only eligible for H-2A), Haiti, Mauritius, and Saint Lucia should be designated as eligible countries to participate in the H-2A and H-2B non-immigrant visa programs because the participation of these countries is in the U.S. interest consistent with the regulations governing these programs.

Bosnia and Herzegovina consistently cooperates with accepting its nationals subject to a final order of removal. Additionally, DOS Consular Affairs does not have significant fraud concerns associated with visa applications submitted by nationals of Bosnia and Herzegovina. Bosnians historically participate in the Summer Work Travel and other exchange programs without presenting significant overstay, fraud, or abuse concerns. Additionally, nationals of Bosnia and Herzegovina do not present significant overstay concerns in other nonimmigrant visa categories. Inclusion of Bosnia and Herzegovina in the H-2A and H-2B programs would bolster the bilateral relationship, further contributing to the United States' goals of countering malign foreign influence and promoting Euro-Atlantic integration. As such, adding Bosnia and Herzegovina to the H-2A and H-2B eligible countries lists serves the U.S. interest.

Nationals of the Republic of Cyprus (ROC) do not present significant overstay concerns and are consistently compliant with the terms and conditions of visa categories. ROC also consistently cooperates on accepting its nationals subject to a final order of removal. Furthermore, DOS's recent validation studies have not identified significant fraud concerns with Cypriot travelers to and from the United States. Its strategic location, European Union membership, and support for democratic principles make the ROC an increasingly important partner for the United States. Adding the ROC to the H-2 eligible country lists would both demonstrate an immediate commitment to strengthening the bilateral relationship and help counter malign foreign influence. Additionally, ROC participation in the H-2A and H-2B non-immigrant visa programs further serves the U.S. interest and Embassy Nicosia's Integrated Country Strategy goals of engaging both the Greek and Turkish Cypriot communities and improving people-to-people contact across the island. Based on the foregoing reasons, adding the ROC to the H-2A and H-2B eligible countries lists serves the U.S. interest.

The Dominican Republic was removed from the list of H-2B eligible countries in a January 18, 2019 **Federal Register Notice** because in FY 2017, DHS estimated that nearly 30 percent of H-2B visa holders from the Dominican Republic overstayed their period of authorized

stay. However, according to FY 2019 overstay rates in H-2B categories, DHS estimated that about five percent of nationals of the Dominican Republic overstayed their period of authorized stay. The Government of the Dominican Republic has a strong working relationship with DHS with respect to accepting its nationals subject to a final order of removal which proceeded uninterrupted throughout the COVID-19 pandemic. There have been no specific fraud trends observed in the H-2A and H-2B visa categories or other nonimmigrant visa categories. The Dominican Republic is a valued partner and works with the United States to advance U.S. interests in the region, such as combatting drug trafficking, protecting the security of U.S. citizens, and promoting democracy in the region. The Dominican Republic's location at the crossroads of transportation routes through the Caribbean, its status as a top five overseas U.S. citizen tourist destination, the family connections for nearly two million U.S. citizens, and its close proximity to U.S. territory, make its continued development and stability vital to the interests of the United States as defined in the National Security Strategy. Therefore, adding the Dominican Republic to the H-2B eligible countries list serves the U.S. interest.

The Government of Haiti has been a valued partner, and consistently cooperated on accepting the return of its nationals subject to a final order of removal which proceeded almost uninterrupted throughout the COVID-19 pandemic, despite the political, environmental, and economic challenges facing Haiti. Adding Haiti back to H-2A and H-2B programs serves the U.S. interest and is consistent with the whole-of-government efforts to address the root causes of irregular migration and create lawful pathways for a safe, orderly, and legal migration<sup>3</sup>. Given the recent challenges (political instability, increasing gang-related violence, and a 7.2 magnitude earthquake) that have faced Haiti, DHS and DOS assess that the H-2A and H-2B programs will provide a stabilizing lawful channel for Haitian nationals seeking economic opportunities. Adding Haiti back to these programs will provide Haitians the opportunity not only to contribute

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<sup>3</sup> E.O. 14010 of Feb 2, 2021. <https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration>



to the U.S. economy, but also apply their earnings and technical experience to advance Haiti's reconstruction and stabilization. Sustainable development and the stability of Haiti is vital to the interests of the United States as a close partner and neighbor. While some factors, including nonimmigrant visa overstay and refusal rates that precipitated Haiti's removal from H-2A and H-2B programs in 2018 remain a concern, the foregoing favorable factors in the U.S. interest outweigh these concerns. DOS will continue to monitor visa applications for fraud trends and compliance with travel regulations. Based on the foregoing analysis, adding Haiti back to the H-2A and H-2B eligible countries lists serves the U.S. interest.

Nationals of Mauritius do not present significant visa overstay concerns and there are no outstanding issues with the repatriation of nationals of Mauritius with a final order of removal from the United States. Additionally, DOS conducted two separate validation studies on proper use of certain visa categories and the results indicated that over 99 percent of nationals of Mauritius complied with the terms and conditions of their visas. Additionally, DHS visa overstay data across all visa categories does not indicate a significant concern over the course of several years. Furthermore, eligibility for H-2A and H-2B nonimmigrant worker programs would bolster the bilateral and economic relationship. Therefore, adding Mauritius to the H-2A and H-2B eligible countries lists serves the U.S. interest.

Saint Lucia does not present significant overstay or fraud concerns across all nonimmigrant visas. Furthermore, adding Saint Lucia to both H-2A and H-2B programs is in the U.S. national interest. First, by providing economic opportunities to Saint Lucians in agriculture and seafood processing, inclusion will directly meet one of the key goals of the country's newly elected government, thereby bolstering bilateral relations at a time when the country is reexamining its foreign policy directions. Second, by affording Saint Lucian nationals greater familiarity with U.S. agriculture and aquaculture best practices, the country's designation for H-2A and H-2B participation by its nationals will increase the productivity of their businesses in these sectors upon their nationals' return from the United States, thus advancing U.S. economic

development goals of strengthening entrepreneurship and diversifying the economy away from its current heavy reliance on tourism. Finally, Saint Lucia is consistently cooperative with the United States on accepting their nationals subject to a final order of removal. As such, adding Saint Lucia to both the H-2A and H-2B eligible countries lists serves the U.S. interest.

**Designation of Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs**

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1) and 215(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1) and 1185(a)(1)), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2A nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Brunei
10. Bulgaria
11. Canada
12. Chile
13. Colombia
14. Costa Rica
15. Croatia
16. Republic of Cyprus

17. Czech Republic
18. Denmark
19. Dominican Republic
20. Ecuador
21. El Salvador
22. Estonia
23. Fiji
24. Finland
25. France
26. Germany
27. Greece
28. Grenada
29. Guatemala
30. Haiti
31. Honduras
32. Hungary
33. Iceland
34. Ireland
35. Israel
36. Italy
37. Jamaica
38. Japan
39. Kiribati
40. Latvia
41. Liechtenstein
42. Lithuania

43. Luxembourg
44. Madagascar
45. Malta
46. Mauritius
47. Mexico
48. Monaco
49. Montenegro
50. Mozambique
51. Nauru
52. The Netherlands
53. New Zealand
54. Nicaragua
55. North Macedonia (formerly Macedonia)
56. Norway
57. Panama
58. Papua New Guinea
59. Paraguay
60. Peru
61. Poland
62. Portugal
63. Romania
64. Saint Lucia
65. San Marino
66. Serbia
67. Singapore
68. Slovakia

69. Slovenia
70. Solomon Islands
71. South Africa
72. South Korea
73. Spain
74. St. Vincent and the Grenadines
75. Sweden
76. Switzerland
77. Taiwan
78. Thailand
79. Timor-Leste
80. Turkey
81. Tuvalu
82. Ukraine
83. United Kingdom
84. Uruguay
85. Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1) and 215(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1) and 1185(a)(1)), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2B nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados

6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Brunei
10. Bulgaria
11. Canada
12. Chile
13. Colombia
14. Costa Rica
15. Croatia
16. Republic of Cyprus
17. Czech Republic
18. Denmark
19. Dominican Republic
20. Ecuador
21. El Salvador
22. Estonia
23. Fiji
24. Finland
25. France
26. Germany
27. Greece
28. Grenada
29. Guatemala
30. Haiti
31. Honduras

32. Hungary
33. Iceland
34. Ireland
35. Israel
36. Italy
37. Jamaica
38. Japan
39. Kiribati
40. Latvia
41. Liechtenstein
42. Lithuania
43. Luxembourg
44. Madagascar
45. Malta
46. Mauritius
47. Mexico
48. Monaco
49. Mongolia
50. Montenegro
51. Mozambique
52. Nauru
53. The Netherlands
54. New Zealand
55. Nicaragua
56. North Macedonia (formerly Macedonia)
57. Norway

58. Panama
59. Papua New Guinea
60. Peru
61. The Philippines
62. Poland
63. Portugal
64. Romania
65. Saint Lucia
66. San Marino
67. Serbia
68. Singapore
69. Slovakia
70. Slovenia
71. Solomon Islands
72. South Africa
73. South Korea
74. Spain
75. St. Vincent and the Grenadines
76. Sweden
77. Switzerland
78. Taiwan
79. Thailand
80. Timor-Leste
81. Turkey
82. Tuvalu
83. Ukraine



84. United Kingdom

85. Uruguay

86. Vanuatu

This notice does not affect the current status of noncitizens who at the time of publication of this notice hold valid H-2A or H-2B nonimmigrant status. Noncitizens currently holding such status, however, will be affected by this notice should they seek an extension of stay in the H-2 classification, or a change of status from one H-2 status to another, for employment on or after the effective date of this notice. Similarly, noncitizens holding nonimmigrant status other than H-2 are not affected by this notice unless they seek a change of status to H-2.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

**Alejandro N. Mayorkas,**

*Secretary of Homeland Security.*

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